

REMARKS

Claims 1-3, 5-16, 18-26 and 51 remain in the application. Claims 1, 15, and 51 are in independent form.

Claims 1, 2, 3, 5-16, 18-26, and 51 stand rejected under 35 U.S.C. §102(e), as being anticipated by U.S. Patent No. 6,529,876, to Dart et al.. Reconsideration of the rejection under 35 U.S.C. § 102(e), as anticipated by the Dart et al. patent, as applied to the claims, is respectfully requested. Anticipation has always been held to require absolute identity in structure between the claimed structure and a structure disclosed in a single reference.

In Hybritech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 231 U.S.P.Q. 81 (Fed. Cir. 1986) it was stated: "For prior art to anticipate under §102 it has to meet every element of the claimed invention."

In Richardson v. Suzuki Motor Co., Ltd., 868 F.2d 1226, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989) it was stated: "Every element of the claimed invention must be literally present, arranged as in the claim."

The Office Action has held that the Dart et al. patent discloses acquiring data prompted by the electronic template for the specific type of patient encounter by conducting an examination of at least a history component, a physical component, and a medical decision component, by one or a plurality of patient encounter entities, as prompted by the selected electronic template. The method includes outputting a Preliminary E&M code, inputting modifying variables, and outputting a Final E&M code. The Office Action has held that the Dart et al. patent therefore discloses a system that meets the limitation of a computer-readable medium encoding a selection option mechanism eliciting medical coding information regarding a patient encounter through the analysis of clinician-entered information and predetermined criteria, said selection option mechanism comprising an elicitation database that requests targeted information regarding the patient encounter based upon the predetermined criteria found

within the clinician-entered information as recited in presently pending independent claim 1. Since similar language for claiming substantially similar subject matter as that of claim 1 is recited in the other independent claims, the Office Action has held that the Dart et al patent also discloses the invention as recited in the other presently pending independent claims.

It is respectfully submitted that the Dart et al. patent discloses a method for establishing a proper E&M code. Figures 8-17 illustrate the process that is utilized to create an E&M code that is most appropriate for the patient encounter. As disclosed at column 8, line 64 through column 9, line 2, the process is utilized only for the creation of a proper E&M code which is limited to physician billing of inpatient encounters, not for eliciting additional responses or additional documentation for supporting DRG (Diagnosis Related Group) assignment. The DRG assignment determines the level of reimbursement to a Hospital for their inpatient encounters and is unrelated to the E&M coding methodology used to reimburse Physician services. The assignment of an appropriate DRG was never contemplated by Dart et al.

In contradistinction, the system as recited in the presently pending independent claims is directed to the quality of information provided by the physician. In other words, the system elicits both additional information and additional documentation as support for a diagnosis. With this improved information, the hospital's clinical quality and safety ratings will be enhanced, a more appropriate evaluation of resources usage will be determined and the hospital will be reimbursed by payors at the most appropriate level. The system accomplishes this by requesting predetermined information based upon the existence of specific criteria. The additional information that is requested includes the types of tests that have been performed, as shown in the attached Figures, which show additional screen shots of the system of the present invention as claimed in the presently pending independent claims. Figure 1 represents an introductory screen of the present invention, which clearly

describes the distinct functionalities of the present invention. Figure 2 represents a screen shot of an input screen demonstrating the present invention's ability to elicit additional information and how this augmentation effects DRG (Diagnosis Related Group) assignment. There are thousands of coding rules and some are dependent on specific information or verbiage that the clinician uses to document the patient's condition and the clinician's observations and conclusions. The presently pending independent claims recite a system that enables the user to better define the patient encounter by eliciting further details from the user based upon the information entered by the user. This additional documentation is directed towards supporting DRG (Diagnosis Related Group) assignment – a purpose and functionality far beyond the scope of the E&M code generated in Dart et al.

Specifically, the selection option mechanism as recited in the presently pending independent claims requests the user to enter detailed information after a patient encounter in order to elicit accurate information. "Augmenting is achieved in response to a prompting, wherein the user notes additions or substitutions to the criteria and/or conclusions and makes adjustments accordingly." (Page 11, lines 12-14) The prompting/requesting is also related to the need for appropriate classification of inpatient services for compliance with DRG selection regulations/requirements. When generating the correct code to submit for reimbursement by insurance companies, accurate information is required at the time of the patient's inpatient services, not at a subsequent inpatient encounter should they need to come back for more services. "Each information prompting form contains different prompts that query the health care provider to supply data or information regarding the patient encounters." (Page 23, lines 7-9 and the attached Figures) "The augmenting mechanism improves the accuracy of the DRG selection to better represent the severity of illness of the patient and the overall quality of patient care by influencing the physician's decisions at the time of patient care delivery." (Page 25, lines 11-13) Thus, at

the time of the patient's inpatient encounter, the clinician can enter information in the system, and while doing so, is prompted at different points of the program to provide additional or detailed information to accurately generate more complete documentation as well as the correct DRG assignment. The request for additional documentation by the claimed system is designed to prompt the physician to provide additional information regarding the patient encounter. As explained above, the additional documentation is directed towards supporting DRG (Diagnosis Related Group) assignment, and is neither requested nor required by the system of the Dart et al. patent. As such, the system of the present pending claims is directed to a purpose and functionality (augmenting and improving the quality of medical documentation to support the DRG assignment) that is wholly independent and distinct from that claimed by Dart et al. (generating E&M codes). This distinction is further evidenced by item 1342 ('Diagnosis Audit') of Figure 10 in Dart et al. which states "There is no computer calculation occurring for this form. This is simply a User selection from a list of Dropdown choices," highlighting that Dart et al. is specifically directed towards E&M code generation, and not toward calculating based on inputs and documentation as is the present invention. Since the Dart et al., patent does not disclose the system of the presently pending independent claims, the claims are patentable over the Dart et al. patent and reconsideration of the rejection is respectfully requested.

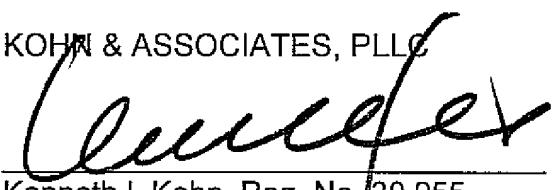
The remaining dependent claims not specifically discussed herein are ultimately dependent upon the independent claims. References as applied against these dependent claims do not make up for the deficiencies of those references as discussed above, and the prior art references do not disclose the characterizing features of the independent claims discussed above. Hence, it is respectfully submitted that all of the pending claims are patentable over the prior art.

Applicant respectfully requests to be contacted by telephone at (248) 539-5050 if any remaining issues exist.

The Commissioner is authorized to charge any fee or credit any overpayment in connection with this communication to our Deposit Account No. 11-1449.

Respectfully submitted,

KOHN & ASSOCIATES, PLLC



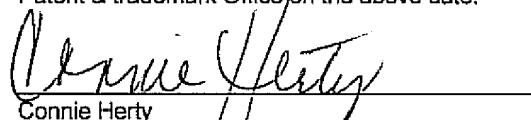
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Connie Herty